

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:****B Petro Corporation****REG. NO. 198601912, LUST NO. 9LTO91****ADMINISTRATIVE ORDER****2013-UT- 01**

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**TO: B Petro Corporation**  
**Attn: Dan Huffaker**  
**9653 N. Granville Road**  
**Mequon, WI 53097**

**Evan P. Schmit**  
**Kerkman & Dunn**  
**757 N. Broadway, Suite 300**  
**Milwaukee, WI 53202-3612**

### I. SUMMARY

The Iowa Department of Natural Resources (Department) issues this Administrative Order (Order) to B Petro Corporation (B Petro) to address violations related to a leaking underground storage tank site. This order requires B Petro to hire a certified groundwater professional (CGP) within 14 days; locate the leak in the piping, permanently close the damaged piping, and conduct closure sampling if required within 30 days; submit a Tier 1 site assessment report within 60 days; and pay an administrative penalty of \$7,728 within 60 days to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Karrie Darnell  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-6490

**Relating to legal requirements:**

Aaron Brees, Attorney  
Iowa Department of Natural Resources  
Des Moines, Iowa 50319-0034  
Ph: 515/281-5965  
aaron.brees@dnr.iowa.gov

OR

Tom Collins  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8879

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 503219-0034

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

**III. STATEMENT OF FACTS**

1. Dhaliwal's Iowa Bulk Stations Two, Inc. (Bulk) was the owner of a facility containing one 12,000 gallon underground storage tank (UST) and one 6,000 gallon UST located at 3326 Center Point Road, Cedar Rapids, Iowa (the Site) until a date on or around August 17, 2010.
2. Bulk is now known as B Petro, having undergone reorganization through Chapter 11 bankruptcy in 2011.
3. The Site was the location of an earlier petroleum release identified as leaking underground storage tank (LUST) No. 8LTG13. Due to this prior release, groundwater from the Site was being tested on a regular basis through the use of monitoring wells.
4. On June 4, 2010, the Department received a Site Monitoring Report (SMR) for LUST No. 8LTG13. This SMR showed thirteen consecutive sampling events at Monitoring Well 2 (MW-2) with negligible benzene values, followed by a September 17, 2009 sample with a value of 5,340 ppb, and a January 19, 2010 sample with a value of 1,270 ppb. Based on this information, Department LUST staff believed that a new release had occurred and requested that staff from Department Field Office 1 visit the Site to investigate.
5. On August 16, 2010, Field Office 1 staff Brian Jergenson visited the site. He found that leak detection was not being conducted on lines or USTs and that fuel was present in the Under Dispenser Containment system. In addition, tank tags were not present on the fill ports, Bulk's pollution liability insurance had expired on June 9, 2010, and there was no documentation of current insurance available on site. Due to these issues, the Site was "red-tagged" to prevent additional delivery of fuel.
6. On September 2, 2010, a third-party leak detection test revealed a gross failure of the super unleaded line.
7. On October 21, 2010, a corrective action (CA) meeting was held which included Bulk representatives. Evidence of the new release was discussed, establishing Bulk as the

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responsible party (RP). Bulk agreed to do a site check for the pipe failure and file an insurance claim for the release.

8. The following day, October 22, 2010, Bulk emailed UST staff Tom Collins stating that the property had been purchased by Bank of Sun Prairie and that Bulk would not commit any funds to the Site.

9. On October 27, 2010, Bulk filed an insurance claim for the new release with Ace Environmental Risk.

10. Bulk failed to follow through on its agreement to conduct a site check and provide results to the Department. Therefore, on November 9, 2010, the Department sent a letter to Bulk's attorney Evan P. Schmit requiring that a Tier 1 site assessment be conducted. Bulk was given 30 days to hire a CGP and 90 days to submit the Tier 1 report. Bulk did not comply with or respond to this letter.

11. On February 24, 2011, having not received a Tier 1 report, the Department sent a Final Notice letter to Mr. Schmit giving Bulk 7 days to name its CGP and submit a plan for completing a Tier 1 assessment. Bulk did not comply with the Final Notice letter.

12. On March 1, 2011, Mr. Schmit emailed the Department stating that the violation "was reported on September 2, 2010" after the date Bulk no longer owned the property (variously stated to be November 17, 2009 or August 17, 2010) and that he was "not clear why Bulk would complete a Tier 1 analysis for a property it did not possess at the time of the violation." As the June 4, 2010 SMR results show, and as was stated to Bulk at the CA meeting and in the Department's November 9, 2010 letter, the release occurred on or prior to September 17, 2009 when Bulk was the owner of the Site, making it the RP. To date, no Tier 1 report has been received.

13. In 2011, Bulk went through Chapter 11 bankruptcy proceedings, emerging under the name B Petro. The Department, through the Iowa Attorney General's office, filed a proof of claim in Bulk's bankruptcy case related to various outstanding civil penalties. The end result was a settlement agreement (Settlement) between B Petro and the Department, entered into on December 19, 2011, and approved and entered as an order of the United States Bankruptcy Court, Eastern District of Wisconsin on January 30, 2012. The Settlement provides a list of "agreed environmental claims" that B Petro commits to resolve through specified UST and LUST work, and a list of "resolved environmental claims" that specifies properties for which no work was required at the time of the Settlement. The Settlement also provides a list of "unresolved environmental claims" containing those properties for which agreement could not be reached for purposes of the Settlement and which were therefore specifically excluded from it. The Site is named as an "unresolved environmental claim."

14. In July 2011, Bulk requested that Department enforcement action related to the Site be put on hold pending the outcome of its negotiations with the Iowa Attorney General's

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office. Those negotiations resulted in the Settlement from which the Site is specifically excluded; therefore the Department now seeks to resume its enforcement activities.

15. On June 8, 2012, the current owners of the Site, Joshua and Selinya Carew, conducted limited sampling/site assessment activities, the results of which confirmed the above cited release.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 IAC chapters 135 and 136.

2. Iowa Code section 455B.471(6) defines an "owner" of USTs. Bulk/B Petro was an owner of USTs at the above referenced facility at the time of the petroleum release.

3. Iowa Code section 455B.474(1)(f) requires the Commission to adopt rules to establish corrective action response requirements for the release of regulated substances, including petroleum. The Commission has adopted "risk-based corrective action" (RBCA) rules in 567 IAC 135.8-10. Subsection 135.9(2) states that "... a Tier 1 assessment must be completed in response to release confirmation..." or "...reliable laboratory analysis which confirms the presence of contamination above the action levels in 567—135.14(455B).” Benzene levels recorded in monitoring well samples from the Site on September 17, 2009 and January 19, 2010 were above action levels, triggering the RBCA rules and requiring a Tier 1 assessment.

4. Bulk/B Petro has failed to submit a Tier 1 report to the Department. This is a violation of 567 IAC 135.9(2).

**V. ORDER**

THEREFORE, the Department hereby orders the following:

1. B Petro shall pay to the order of the Department an administrative penalty of \$7,728 within 60 days of receipt of this Order.

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2. B Petro shall locate the breach/release in the product line that failed the September 2, 2010 tightness test to ensure that the location of the release has been adequately sampled. If the area of the release has not been adequately sampled, additional soil and/or groundwater sampling will be required. This work shall be performed within 30 days of receipt of this Order and in compliance with IAC rules.
3. B Petro shall permanently close the product line that failed the September 2, 2010 tightness test within 30 days of receipt of this Order and in compliance with IAC rules.
4. B Petro shall complete a Tier 1 assessment and submit a report to the Department within 60 days of receipt of this Order and in compliance with IAC rules.
5. B Petro shall conduct all additional assessment and/or remediation work required by law based on the results of the Tier 1 assessment on a schedule to be determined following Department review of the Tier 1 report.
6. B Petro shall provide proof that it has hired a CGP to complete all required work within 14 days of receipt of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

**ECONOMIC BENEFIT:** A Tier 1 report has been required since November 9, 2010. An average Tier 1 assessment costs \$6,500. By deferring these costs, B Petro has benefitted by earning interest on this amount. Applying Iowa Department of Revenue interest rates for the relevant time periods produces the following benefit:

November 2010 – February 2013: \$6,500 @ 0.4% per month x 28 months = \$728

This economic benefit total assumes that B Petro will conduct a Tier 1 assessment as required by this Order, and therefore will not benefit by avoiding the actual cost of that assessment.

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**GRAVITY:** A Tier 1 assessment has been required at the Site since November 9, 2010. B Petro has failed to submit the appropriate site assessment report, leaving it unknown as to what extent the Site may pose a threat to human health or the environment. Failure to perform an appropriate assessment undermines the effectiveness of the regulatory program, which is designed to prevent and minimize risks to human health and the environment. Accordingly, \$3,000 is assessed for this factor.

**CULPABILITY:** B Petro, in its current form and in previous incarnations, has owned and/or operated UST sites in Iowa for many years. It is or should be well versed in the requirements of owning and maintaining USTs and its responsibilities when a release is detected. As such, \$3,000 is assessed for this factor.

**MITIGATING OR AGGRAVATING FACTORS:** Information that would be provided in a Tier 1 report is crucial to allocating responsibility and funding to address corrective action and site monitoring for the two releases at the Site. The SMR for LUST No. 8LTG13 indicates that the Site is classified as High Risk. B Petro's failure to complete a Tier 1 has delayed and continues to delay response to the high risk conditions already present at this Site. For this reason, an additional \$1,000 penalty is assessed.

The total penalty calculation comes to \$7,728.

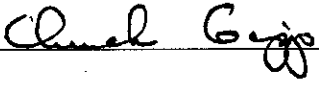
## VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476 and 561 IAC 7, as adopted by reference by 567 IAC 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC 7.

## VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.

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CHUCK GIPP  
DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13<sup>th</sup> day of March, 2013

B Petro Corporation.; Karrie Darnell; Tom Collins; Aaron Brees; V(F).

